

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

(1) FAO No. 2515 of 2013 (O&M)
 Date of decision: April 12, 2016

M/s Chola Mandalam M.S. General Insurance Co. Ltd.

...Appellant

Versus

Neetu Devi and others

...Respondents

(2) FAO No. 5851 of 2014 (O&M)

Neetu Devi and others

...Appellants

Versus

Ranbir Singh and others

...Respondents

CORAM:- HON'BLE MR. JUSTICE K. KANNAN

1. **Whether Reporters of local papers may be allowed to see the judgment ?**
2. **To be referred to the Reporters or not ?**
3. **Whether the judgment should be reported in the Digest?**

Present: Ms. Vandhana Malhotra, Advocate,
 for the appellant in FAO No. 2515 of 2013 and
 for respondent No. 2 in FAO No. 5851 of 2014.

Mr. Gaurav Khera, Advocate,
for the appellants in FAO No. 5851 of 2014 and
for respondents No. 1 to 3 in FAO No. 2515 of 2013.

Mr. Parveen Jain, Advocate,
for respondent No. 1 in FAO No. 5851 of 2014 and
for respondent No. 4 in FAO No. 2515 of 2013.

K. KANNAN, J. (Oral)

1. Both the appeals are connected and the appeal in FAO No. 2515 of 2013 by the insurer is on the issue of negligence and the quantum and the appeal in FAO No. 5851 of 2014 is for enhancement of claim of compensation.

2. On 12.6.2011, the deceased was driving his car and dashed against a tractor going ahead of him. It was stated in evidence by the driver of the tractor that on account of impact of collision, the tractor and the trailer attachment got split into two. According to him, the deceased was under the influence of liquor and was negligent. Yet another person who was said to be following the vehicle was Dhanpanti and he gave a statement that the deceased was not under the influence of liquor and the negligence was only on the part of the driver of the tractor. The Tribunal made reference about the fact that a case had been registered against the driver of the tractor and held, therefore, that the driver of the tractor alone was responsible.

3. I find the decision of the Tribunal as regards the negligence to be faulty, for, it has not taken note of the evidence given by the driver of the tractor and the facts stated by the claimants themselves. Admittedly, the deceased was driving his car behind the tractor and even if the tractor were to take suddenly right turn, the vehicle following the tractor should apply caution and wait till the tractor had turned. The driver of the tractor, however, explained that there was slight bend in the right itself and the deceased dashed between the tractor and the trailer which showed the negligence of the deceased. A mere registration of a complaint ought not have been taken as concluding the aspect regarding negligence which the

Tribunal was bound to enter on the basis of the version of witnesses. The Tribunal has simply discarded the evidence of the Tribunal and the admitted position that the deceased was following a tractor and not coming from the opposite direction. I will modify the finding as regards negligence and apportion the liability between the driver of the tractor and the deceased at 75:25.

3. The deceased who was said to be born on 8.12.1985 and the Tribunal took his age as 25, applied a multiplier of 18, taking the income at ₹20,000/-. I will re-work the compensation taking the income as actually given at ₹19,518/- provide for 50% prospects of increase, deduct 10% towards tax and allow for a multiplier of 18. The several heads of claims are tabulated as under:-

<i>Fatal Accident</i>		<i>Date of accident</i>	
Age	25	16.2.2011	
Occupation	Constable		
Claimants:	Mother, daughter and widow		
	Heads of claim	Tribunal	High Court
Sr. No.		Amount (₹)	Amount (₹)
1	Income	20,000	19,518
2	Add, 50% of increase	30,000 less 10% towards tax=27,000	26,349
3	Deduction 1/3 rd	18,000	17,566
4	Multiplicand (annualized)	2,16,000	210792
5	Multiplier	18	18
6	Loss of dependence	38,88,000	37,94,256
7	Medical expenses		
8	Loss of Consortium	10,000	1,00,000
9.	Loss of love and affection		1,00,000
10	Loss to estate		5,000
11	Funeral Expenses	5,000	25,000
	Total	39,03,000	40,24,256

4. In the manner of reckoning, I have further provided for ₹1 lakh for loss of consortium and ₹1 lakh for love and affection to daughter and mother and ₹25,000/- towards funeral expenses. The aggregate compensation shall be ₹40,24,256/- and after providing 25% towards contribution of the deceased for causing accident, the total amount of compensation would be ₹30,18,192/-. The Tribunal has already assessed the compensation at ₹39,03,000/-. In view of the reduction of compensation made, FAO No. 5851 of 2014 for enhancement filed by the claimants is dismissed and FAO No. 2515 of 2013 filed by the insurer is allowed to the above extent. There shall be proportionate deduction of the claims for apportionment already made by the Tribunal. The amount of ₹25,000/- deposited before this Court is ordered to be refunded to the insurer company.

April 12, 2016
prem

(K.KANNAN)
JUDGE